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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,691	12/08/2003	Mark W. Bergman	B787.12-0008	4310
164	7590	09/08/2004	EXAMINER	
KINNEY & LANGE, P.A. THE KINNEY & LANGE BUILDING 312 SOUTH THIRD STREET MINNEAPOLIS, MN 55415-1002			BAREFORD, KATHERINE A	
			ART UNIT	PAPER NUMBER
			1762	

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/730,691	Applicant(s) BERGMAN ET AL.	
	Examiner Katherine A. Bareford	Art Unit 1762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/03</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: at page 1, line 5, of the specification "now pending" in reference to the parent case should be replaced by "now U.S. Patent No. 6,708,838".

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Zebrowski (US 5836469).

Claim 1: Zebrowski teaches a method for securing a user's hand to a container. Column 1, lines 50-55 and column 2, line 55 through column 3, line 20 and figures 7-10. The container has an outer surface and an inner surface. Figures 7-10 and column 2, lines 20-35. The inner surface defines a cavity therein. Figures 7-10 and column 2, lines 20-35 (for holding the beverage). A strap is provided having a least one end secured to the outer surface of the container. Figures 7-10 and column 2, lines 55-65 (strap 40). The strap is mounted relative to the container to permit resilient movement of at least a portion of the strap toward and away from

the container. Figures 7-10 and column 2, line 55 through column 3, line 35 (while the bottle wall is referred to as being moving, this would provide relative movement of the strap; and as well the strap would be movable and flexible to some degree as it is made of the same material as the bottle wall). The hand is inserted between the strap and the outer surface of the container to a degree sufficient to move that portion of the strap away from the container. Figures 7-10 and column 2, line 55 through column 3, line 35 (while the bottle wall is referred to as being moving, this would provide relative movement of the strap; and as well the strap would be movable and flexible to some degree as it is made of the same material as the bottle wall). The strap resiliently urges the hand against the outer surface of the container. Column 3, lines 1-10.

Claim 2: Zebrowski also teaches a method of holding a fluid. Column 2, lines 20-30 and column 3, lines 15-25. A container is provided having a bottom end and a sidewall extending from the bottom end. Figures 7-10 and column 2, lines 25-35 (note bottom wall portion 20 and wall 18 rising up from that area to area 24). A supportive strap is provided having a first end and a second. Figures 7-10 and column 2, lines 55-65 (strap 40). The first end is secured to the container. Figures 7-10 and column 2, lines 55-65 (note area 40a). The supportive strap is flexible and extending along but outwardly spaced from the sidewall to form a pocket between the supportive strap and the sidewall. Figures 7-10 and column 2, line 55 through column 3, line 35 (while the bottle wall is referred to as being moving, this would provide relative movement of the strap; and as well the strap would be movable and flexible to some degree as it is made of the same material as the bottle wall; and note pocket area 42 on figure 7 and the space in figure 9). An appendage is inserted through the pocket wherein the supportive strap resiliently urges the

appendage against the sidewall. Figures 7-10 and column 3, lines 1-10. Fluid is introduced into the container. Column 3, lines 15-25.

Claim 3: the second end of the supportive strap can be secured to the bottom end of the container. Figure 7 and column 2, lines 55-65 (note the positioning of point 40b in the bottom wall portion 20).

Claim 8: the appendage can be a hand of a user. Column 2, line 55 through column 3, lines 10.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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6. Claims 1-6, 8-14 and 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong (US 4927046) in view of Zebrowski (US 5836469).

Claim 1: Armstrong teaches a method for securing a users hand to a container. Figures 1 and 6 and column 2, lines 40-45. The container has an outer surface and an inner surface. Figure 1 (note area 1 and area 7). The inner surface defines a cavity therein. Figure 1. A supportive handle is provided which is an integral part of the container body. Figure 5 and column 4, lines 15-35. To hold the container, the hand of the user is inserted between the handle and the outer surface of the container, so that the hand grips the handle. Figures 1 and 6 and column 3, lines 1-15.

Claim 2: Armstrong also teaches a method of holding a fluid. Column 2, lines 40-45 and figures 1 and 6. A container is provided having a bottom end and a sidewall extending from the bottom end. Figure 5 (note area of element 8 and element 1). A supportive handle is provided that is an integral part of the container body. Figure 5 and column 4, lines 15-35. To hold the container, the hand (appendage) of the user is inserted between the handle and the outer surface of the container, so that the hand grips the handle. Figure 1 and 6 and column 3, lines 1-15. Fluid is introduced into the container. Figure 6 and column 2, lines 40-45.

Claims 5, 11, 17: a fluid applicator tool is provided. Figure 6. The fluid applicator tool is inserted into the fluid within the container. Figures 1 and 6. The fluid is applied to a surface with the fluid applicator tool. Figure 6.

Claims 6, 14: a retainer is provided for securing at least a portion of the fluid applicator tool within the container. Column 4, lines 1-20 and figure 1.

Claim 8: the appendage can be a hand of a user. Figure 1.

Claims 9, 16, 20: the fluid can be paint. Column 2, lines 40-45.

Claims 10, 21: the applicator tool can be a brush. Figure 6.

Armstrong teaches all the features of these claims except the use of the strap as claimed and the adjustable features of the strap.

However, Zebrowski teaches a method for securing a user's hand to a container. Column 1, lines 50-55 and column 2, line 55 through column 3, line 20 and figures 7-10. The container has an outer surface and an inner surface. Figures 7-10 and column 2, lines 20-35. The inner surface defines a cavity therein. Figures 7-10 and column 2, lines 20-35 (for holding the beverage). One method of securing the user's hand to the container is to provide an integral handle molded in the container. Figures 1-6 and column 2, lines 30-55. To hold the container, the hand of the user is inserted between the handle and the outer surface of the container, so that the hand grips the handle. Column 2, lines 30-55. A second method of securing user's hand to the container is to provide a strap having at least one end secured to the outer surface of the container. Figures 7-10 and column 2, lines 55-65 (strap 40). The strap is mounted relative to the container to permit resilient movement of at least a portion of the strap toward and away from the container. Figures 7-10 and column 2, line 55 through column 3, line 35 (while the bottle wall is referred to as being moving, this would provide relative movement of the strap; and as well the strap would be movable and flexible to some degree as it is made of the same material as the bottle wall). The hand is inserted between the strap and the outer surface of the container to a degree sufficient to move that portion of the strap away from the container. Figures 7-10

and column 2, line 55 through column 3, line 35 (while the bottle wall is referred to as being moving, this would provide relative movement of the strap; and as well the strap would be movable and flexible to some degree as it is made of the same material as the bottle wall). The strap resiliently urges the hand against the outer surface of the container. Column 3, lines 1-10. Fluid is introduced into the container. Column 3, lines 15-25. The second end of the supportive strap can be secured to the bottom end of the container. Figure 7 and column 2, lines 55-65 (note the positioning of point 40b in the bottom wall portion 20).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Armstrong to use a resilient flexible strap to hold the hand in contact with the container rather than the molded handle as suggested by Zebrowski with an expectation of providing a desirably supported container, because Armstrong teaches a hand held container to hold fluid with an integral handle, and Zebrowski teaches that when providing a hand held container to hold fluid, it is desirable to use either an integrally molded handle or to use an attached strap to hold the hand with an optional molded recess to place the hand. As shown by the placement of the handle in Armstrong, the replacement of the handle area with a strap would provide the bottom of the strap on the bottom side of the container. As to the adjustability of the strap, Armstrong indicates that the user can have variously sized hands (column 3, lines 1-5) and as a result, it would have been obvious to one of ordinary skill in the art to make the strap adjustable to allow for different sized hands given that it is the Examiner's position that it is well known in the art to make holding devices such as belts adjustable for different sized users.

7. Claims 7, 15 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong in view of Zebrowski as applied to claims 1-6, 8-14 and 16-21 above, and further in view of Vaughn (US 3536285).

Armstrong in view of Zebrowski teach all the features of these claims except the magnet for holding the applicator tool in the container.

However, Vaughn teaches that it is desirable to provide a device for holding a paint brush in a paint container. Column 1, lines 10-50. The device is a magnetic means which is secured to the wall of the paint container which magnetically holds the paint brush. See figure 3 and column 2, lines 15-50.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Armstrong in view of Zebrowski to provide a magnetic means on the wall of the paint container to hold the paint brush in order to provide a desirably held paint brush, because Armstrong in view of Zebrowski teach providing a paint container with a handle and a paint brush holding means on the handle side of the container, and Vaughn teaches a desirable paint brush holding means is a magnetic means attached to the wall of the paint container. The magnetic means would be placed on the holder side of the container, because that is where Armstrong indicates the desire to hold the paint brush.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katherine A. Bareford whose telephone number is (571) 272-1413. The examiner can normally be reached on M-F(6:30-4:00) with the First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive P. Beck can be reached on (571) 272-1415. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and for After Final communications.

Other inquiries can be directed to the Tech Center 1700 telephone number at (571) 272-1700.

Furthermore, information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


KATHERINE BAREFORD
PRIMARY EXAMINER